

1 **REMARKS**

2 The Applicant respectfully requests reconsideration and allowance of claims 17-33, and  
3 consideration and allowance of new claims 34 through 37.

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5 **I. AMENDMENTS AND STATUS OF CLAIMS**

6 This application was originally filed with claims 1-16. Claims 1-16 were cancelled and  
7 new claims 17-33 were added in a preliminary amendment filed February 1, 2005. New claims  
8 34-37 are added above. Claims 17-37 are now pending in this application.

9 The first paragraph of the disclosure is amended above to provide the status of parent  
10 application serial No. 09/965,337. The Applicant submits that this amendment obviates the  
11 objection to the disclosure set out at paragraph 1, page 2 of the Office Action.

12 The disclosure is also amended at page 9 above to add the expression "aqueous  
13 ammonia" to the disclosure in addition to the alternative expression "ammonium hydroxide  
14 solution." This change in the disclosure is made for consistency with the claims in the case.

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16 **II. TERMINAL DISCLAIMER**

17 Enclosed with this response is a terminal disclaimer in compliance with 37 C.F.R.  
18 §1.321(c), together with a charge authorization for the terminal disclaimer fee. The Applicant  
19 believes that the enclosed terminal disclaimer obviates the obviousness-type double patenting  
20 rejection set out at paragraph 5 of the Office Action.

1 III. THE CLAIMS ARE NOT OBVIOUS IN VIEW OF THE CITED REFERENCES

2 The Office Action rejected claims 17-33 under 35 U.S.C. §103(a) as being unpatentable  
3 over U.S. patent No. 5,433,142 to Roth (the "142 patent") in view of U.S. patent No. 3,023,109  
4 (the "Hines patent" or "Hines"). The Applicant respectfully traverses these rejections on the  
5 ground that there is no teaching, suggestion, or motivation in the prior art to make the proposed  
6 combination.

7 The Office Action indicates that it would have been obvious to use ammonia gas or  
8 aqueous ammonia as the working gas in the 142 patent since it was old to contact meat with  
9 ammonia or ammonium hydroxide to produce a bright red color in the meat as disclosed in the  
10 Hines patent. While the Hines patent clearly does disclose placing ammonia gas in contact with  
11 meat to improve the color of the meat, the Hines patent itself describes limitations on the  
12 ammonia treatment process. The Applicant submits that one of ordinary skill in the art acting at  
13 the time of the present invention would not have found it obvious to use ammonia gas as the  
14 working gas in the process disclosed in the 142 patent in view of the ammonia treatment  
15 limitations taught by Hines and in view of the gas treatment parameters disclosed in the 142  
16 patent.

17 At the paragraph beginning at Col. 1, line 59, the Hines patent discloses that the ammonia  
18 exposure time must be limited in order to prevent the treated meat from becoming leathery. The  
19 longest time suggested by the Hines patent for exposure to an ammonia atmosphere is six  
20 minutes at the top of Col. 2. The Hines patent does not at any point suggest contacting meat with  
21 aqueous ammonia to improve the color of the meat. It must also be borne in mind that the  
22 treatment disclosed in Hines is in an ammonia atmosphere that appears to be at atmospheric or  
23 near atmospheric pressure. That is, there is no suggestion anywhere in the Hines patent or

1 elsewhere in the prior art that high treatment pressures are suitable for use in contacting the meat  
2 with ammonia gas. Furthermore, the Hines patent discloses at the paragraph beginning at line 10  
3 of Col. 2 that "nearer the maximum times" of ammonia treatment, there is a tendency for the  
4 meat to retain a distinct odor of ammonia. Thus, Hines goes on to suggest that ammonia  
5 concentration and exposure time should be kept as low as is consistent with producing the  
6 desired red color.

7 The device and treatment process disclosed in the 142 patent relies on high operating gas  
8 pressures for several minutes or lower pressures for longer periods of time in order to damage  
9 microbes in the meat product being treated. That is, the device and process described in the 142  
10 patent relies on pressurizing the meat in the presence of an operating gas and holding the gas  
11 pressure for a period of time. The gas pressure is then released in an effort to physically damage  
12 the microbes. The hold period required for a 3500 psi operating pressure is disclosed as being  
13 two minutes (142 patent at Col. 6, lines 32-33 ). The 142 patent teaches that lower operating  
14 pressures require longer operating periods, that is, longer pressure hold periods (142 patent at  
15 Col. 6, lines 39-41).

16 Considering that Hines on the one hand teaches that ammonia exposure to meat must be  
17 limited in order to avoid adverse effects in the meat, and considering that the 142 patent on the  
18 other hand teaches that fairly lengthy operating periods are required in the 142 patent process  
19 even at very high gas pressures, the Applicant believes it would not have been obvious to use  
20 ammonia gas as an operating gas in the pressurize and release process described in the 142  
21 patent. The Applicant further believes that the teachings of the Hines patent would have in fact  
22 dissuaded one of ordinary skill in the art from using ammonia gas as the operating gas in the  
23 treatment process disclosed in the 142 patent. The teachings of the two references are simply

1 incompatible. The Hines patent teaches low pressure, time-limited contact between ammonia gas  
2 and a meat product, whereas the pump-type apparatus in the 142 patent requires elevated  
3 treatment pressures and results in intimate mixing of the operating gas with the meat product. In  
4 order for one to have made the combination of Hines and the 142 patent suggested in the Office  
5 Action, one of ordinary skill in the art would have had to completely disregard the teachings in  
6 the Hines patent of limiting ammonia contact time.

7 Because there is no teaching, suggestion, or motivation in the prior art to make the  
8 combination of the Hines patent and 142 patent as suggested in the Office Action, the Applicant  
9 respectfully submits that the combination is improper under 35 U.S.C. §103 and should be  
10 withdrawn.

1 CONCLUSION

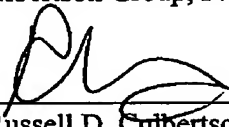
2 For all of the above reasons, the Applicant respectfully requests reconsideration and  
3 allowance of claims 17 through 37.

4 If the Examiner should feel that any issue remains as to the allowability of these claims,  
5 or that a conference might expedite allowance of the claims, the Examiner is asked to telephone  
6 Applicant's attorney Russell D. Culbertson.

7 Respectfully submitted,

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9 The Culbertson Group, P.C.

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25 I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, (Fax  
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